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10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA
12 WESTERN DIVISION

13 JAMES ESTAKHRIAN and ABDI
14 NAZIRI, on behalf of themselves and
15 all others similarly situated,
16 *Plaintiffs,*

17 v.

18 MARK OBENSTINE, BENJAMIN F.
19 EASTERLIN IV, TERRY A.
20 COFFING, KING & SPALDING, LLP
21 and MARQUIS & AURBACH, P.C.,
22 *Defendants.*

) Case No. 2:11-cv-3480-FMO

)

)

23) **NOTICE OF MOTION AND**
24) **MOTION FOR ATTORNEYS'**
25) **FEEES, COSTS, AND EXPENSES;**
26) **MEMORANDUM IN**
27) **SUPPORT THEREOF**

28)

) Hearing Date: May 16, 2019

)

) Time: 10:00 a.m. Courtroom: 6D

)

) Hon. Fernando M. Olguin

NOTICE OF MOTION

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

Please take notice that on May 16, 2019 at 10:00 a.m., or as soon thereafter as this matter can be heard, Plaintiffs James Estakhrian and Abdi Naziri will, and they hereby do, move for an award of attorneys' fees, costs, and expenses to Class Counsel to be paid out of the Judgment, as follows:

1. Attorneys' fees to Class Counsel of 30% of the Judgment, or up to \$ 3.6 million; and

2. An award of costs and expenses to Class Counsel for costs and expenses incurred in the prosecution of all claims on behalf of the Class since November 15, 2015, which amounts to \$34,170.44.

This motion is brought pursuant to Rules 23(h) and 54(d)(2) of the Federal Rules of Civil Procedure, the Court's prior orders, and the Judgment in this matter entered March 26, 2019 (Dkt. 622). It is based on this Notice, the Memorandum of Points and Authorities set forth below, the accompanying declarations of Class Counsel, all other papers and records in the Court's file, and such other and further matters as may be presented at the hearing.

Dated: April 9, 2019

Respectfully submitted,

IRVINE LAW GROUP, LLP

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MEMORANDUM OF POINTS AND AUTHORITIES

I. BACKGROUND

On March 26, 2019 (Dkt. 622), this Court entered judgment on plaintiffs' claims for 1) breach of fiduciary duty, 2) violation of the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200 *et seq.*, and 3) violation of the California Consumer Legal Remedies Act, Cal. Civil Code §§ 1750 *et seq.* The Court ordered Defendant Mark Obenstine to disgorge and pay as restitution to the class members the amount of \$12.0 million that he received as attorney's fees in *Daniel Watt, et al. v. Nevada Property 1, LLC, et al.*, Nevada District Court, Case No. A582541 (the "*Watt* Litigation"). The Court further ordered that, subject to the allocation of attorneys' fees and costs to class counsel, the class members be are to be paid their shares of the net monetary award, pro rata, based on their recovery from the settlement of the *Watt* litigation.

Earlier, class counsel moved for an award of fees and expenses in connection with the approval of the \$4.625 million settlement of claims against Defendants King & Spalding LLP and Benjamin F. Easterlin, IV ("K&S Defendants"). Class counsel were awarded \$1,156,250 in attorney's fees and \$136,202.44 in costs in accordance with the terms of the settlement. October 24, 2016, Order re: Final Approval of Class Action Settlement; Approval of Attorney's Fees, Costs & Service Awards (Dkt. 490) at 21 ("Oct. 24 Order"). That award was based on time and expenses expended up through November 15, 2015. *See* December 3, 2015, Dkts. 388-1 to 388-4 (declarations of class counsel).

This motion seeks the recovery of class counsel's fees, costs, and expenses since November 15, 2015, presented here on the same basis as presented in conjunction with the K&S settlement. On that basis, class counsel seek a fee award of \$3.6 million and \$34,170.44 in costs and expenses.

1 **II. ARGUMENT**

2 Plaintiffs incorporate by reference their December 3, 2015 fee motion (Dkt.
3 388) and rely upon the Court's Oct. 24 Order (Dkt. 490) with regard to the
4 showing of: the result achieved for the class; the complexity of the case; the skill,
5 experience and performance of class counsel; the risk of nonpayment; and the
6 reaction of the class. Oct. 24 Order at 15-18.

7 Since that time, among other things plaintiffs obtained preliminary and final
8 approval of the K&S settlement (Dkt. 418, Feb. 26, 2016; Dkt. 490, Oct. 24, 2016),
9 implemented the settlement with distribution of settlement funds to class members,
10 obtained an order from the special master recommending sanctions against
11 Obenstine and his counsel (Dkt. 507, Feb. 29, 2016), obtained an order restricting
12 Obenstine's disposal of his residential property interests in Oregon (Dkt. 507, April
13 7, 2017), obtained a preliminary injunction precluding Obenstine's unauthorized
14 communications with class members (Dkt. 534, June 20, 2017), and partially
15 prevailed on a further sanctions motion (Dkt. 583, Dec. 4, 2017). Plaintiffs spent
16 months preparing for trial, filing motions *in limine*, and preparing jury instructions
17 and a pretrial order. That activity led up to the Court's ruling at the final pretrial
18 conference to bifurcate the case and set a bench trial on the equitable issues on
19 December 12, 2017 (Dkt. 592, Dec. 8, 2017), where plaintiffs prevailed. Plaintiffs
20 submit that the legal effort protected the interests of the class, was at least the same
21 level that justified the prior fee award, and supports the award requested here.

22 As before, plaintiffs request an award based on the percentage of recovery.
23 Previously, the common fund was created by a settlement, here by a judgment. The
24 principles are the same in the Ninth Circuit jurisprudence in either situation. Here
25 class counsel requests a fee award of 30% of the amount of the judgment, a modest
26 increase in the 25% benchmark used by the federal courts in California in cases
27 presenting state law claims, as here. *See* Oct. 24 Order at 14-15.

1 Plaintiffs submit that the ultimate results in the case achieved through trial and
 2 in many interim skirmishes with Defendant Obenstine justify a 30% award.
 3 Certainly the skill required, the difficulty encountered, and the results achieved in
 4 the final judgment exceeded the effort and accomplishment in the K&S settlement.

5 The lodestar cross-check further supports the 30% fee request. *See* Oct. 24
 6 Order at 17-18. As the Court there observed, class counsel's lodestar was
 7 approximately four times higher than the fee award in the K&S settlement. Even
 8 assuming that the entire \$12.0M judgment is disgorged and counsel obtains the
 9 maximum \$3.6M fee, the lodestar over the entire case would still be 1.49 times the
 10 two fee awards combined. *See* accompanying declarations of class counsel. The
 11 unfortunate reality is that the disparity between the lodestar and the actual fees
 12 recovered in the entire case will be greater, as Obenstine repeatedly has declared
 13 himself to be of extremely limited means, despite the \$12.0M fee he obtained in the
 14 *Watt* litigation.

15 Finally, as shown in the accompanying declarations of class counsel, they
 16 have incurred \$34,704.44 in litigation costs and expenses that were not reimbursed
 17 in connection with the K&S settlement, and seek the payment of these costs out of
 18 the judgment as well. *See* Oct. 24 Order at 18-19; *see also* Plaintiffs' Dec. 3, 2015
 19 motion for fees (Dkt. 388 at 11).

20 For the foregoing reasons, Plaintiffs respectfully request that their motion be
 21 granted.

22 Dated: April 9, 2019

Respectfully submitted,

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